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2d Session
HOUSE OF REPRESENTATIVES
REPORT
100-1056

HEALTH MAINTENANCE ORGANIZATION AMENDMENTS OF 1988

OCTOBER 5, 1988.—Ordered to be printed

Mr. DINGELL, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 3235]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment to the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE, REFERENCE.

(a) SHORT TITLE.—This act may be cited as the "Health Maintenance Organization Amendments of 1988".

(b) REFERENCE.—Whenever in this Act (other than in section 6(a)) an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Public Health Service Act.

SEC. 2. ORGANIZATIONAL STRUCTURE.

Section 1301(a) (42 U.S.C. 300e(a)) is amended by striking out "legal entity" and inserting in lieu thereof "public or private entity which is organized under the laws of any State and".

SEC. 3. DEDUCTIBLES.

Section 1301(b)(1) (42 U.S.C. 300e(b)(1)) is amended by adding after the second sentence the following: "If a health maintenance organization offers to its members the opportunity to obtain basic health

services through a physician not described in subsection (b)(3)(A), the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician.".

SEC. 4. PHYSICIAN SERVICES.

(a) GENERAL RULE.—Section 1301(b)(3)(A) (42 U.S.C. 300e(b)(3)(A)) is amended by striking out "the services of a physician which are provided as basic health services shall be provided" and insert in lieu thereof "at least 90 percent of the services of a physician which are provided as basic health services shall be provided".

(b) DUAL-CHOICE.—Section 1310(b) (42 U.S.C. 300e-9(b)) is amended—

(1) in paragraph (1), by inserting before the comma at the end the following: "and provides at least 90 percent of such services through physicians described in section 1301(b)(3)(A)", and

(2) in paragraph (2), by inserting before the comma at the end the following: "and provides no more than 10 percent of such services through physicians who are not described in section 1301(b)(3)(A)".

SEC. 5. ORGANIZATION.

(a) FISCAL OPERATION.—

(1) Section 1301(c)(1)(A) (42 U.S.C. 300e(c)(1)(A)) is amended to read as follows:

"(1)(A) have—

"(i) a fiscally sound operation, and

"(ii) adequate provision against the risk of insolvency.

which is satisfactory to the Secretary, and".

(2) Section 1301(c) (42 U.S.C. 300e(c)) is amended by adding after and below paragraph (9) the following: "The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.".

(3) During the period prior to the effective date of regulations issued under section 1301(c) of the Public Health Service Act (as amended by paragraph (2)), the Secretary of Health and Human Services shall consider the application for qualification under section 1301(c)(1)(A) of such Act of a health maintenance organization—

(A) which is owned or controlled by another organization, and

(B) which requests that the resources of the other organization be considered in determining its qualification under such section.

if the Secretary receives satisfactory assurances from the other organization that it will assume the financial obligations of the

health maintenance organization and if the Secretary determines that the other organization meets such other requirements as the Secretary determines are necessary.

(b) BOARD OF DIRECTORS.—Paragraph (5) of section 1301(c) (42 U.S.C. 300e(c)) is repealed and paragraphs (6) through (9) are redesignated as paragraphs (5) through (8), respectively.

SEC. 6. DEFINITIONS.

(a) ORGAN TRANSPLANTS.—Subsection (b) of section 812 of the Health Maintenance Organization Amendments of 1986 (42 U.S.C. 300e–1 note) is repealed.

(b) COMMUNITY RATING.—

(1) The third sentence of section 1302(8)(C) (42 U.S.C. 300e–1(8)(C)) is amended to read as follows: "If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

"(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

"(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

"(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

"(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.".

(2) Section 1302(8)(C) (42 U.S.C. 300e–1(8)(C)) is amended by adding at the end the following: "If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.".

SEC. 7. EMPLOYEES' HEALTH BENEFIT PLANS.

(a) REVISIONS.—

(1) STATES AND POLITICAL SUBDIVISIONS.—

(A) Section 1310(b) (42 U.S.C. 300e–9(b)) is amended (i) by striking out "subject to subsection (a)" and inserting in lieu thereof "or a State or political subdivision", and (ii) by striking out "employer pursuant" and inserting in lieu thereof "employer or State or political subdivision pursuant".

(B) Section 1310(c) (42 U.S.C. 300e–9(c)) is amended by inserting "or State or political subdivision" after "employer" each place it occurs.

(2) DISCRIMINATION.—Section 1310(c) (42 U.S.C. 300e–9(c)) is amended by adding at the end the following: "If a health benefits plan offered by an employer or a State or political subdivision under subsection (a) includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.".

(3) APPLICATION.—Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e–9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act.

(b) REPEAL OF DUAL CHOICE.—Effective 7 years after the date of the enactment of this Act, section 1310 (42 U.S.C. 300e–9) is amended to read as follows:

EMPLOYEES' HEALTH BENEFITS PLANS

"SEC. 1310. (a) In accordance with regulations which the Secretary shall prescribe—

"(1) each employer—

"(A) which is required during any calendar quarter to pay its employees the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (or would be required to pay its employees such wage but for section 13(a) of such Act), and

"(B) which during such calendar quarter employed an average number of employees of not less than 25, and

"(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 317, 318, or 1002,

which offers to its employees in the calendar year beginning after such calendar quarter the option of membership in a qualified health maintenance organization which is engaged in the provision of basic health services in a health maintenance organization service area in which at least 25 of such employees reside shall meet the requirements of subsection (b) with respect to any qualified health maintenance organization offered by the employer or State or political subdivision.

"(b)(1) If a health benefits plan offered by an employer or a State or political subdivision includes contributions for services offered under the plan, the employer or State or political subdivision shall

make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.

"(2) Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provide a health benefits plan to which an employee contribution is not required shall, with the consent of an employee who exercises option of membership in a qualified health maintenance organization, arrange for the employee's contribution for membership in the organization to be paid through payroll deductions.

"(3) No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this subsection than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees.

"(c) For purposes of this section, the term 'qualified health maintenance organization' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 1301(b) and that it is organized and operated in the manner prescribed by section 1301(c), and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 1301(b) and will be organized and operated in the manner prescribed by section 1301(c).

"(d)(1) Any employer who knowingly does not comply with one or more of the requirements of paragraph (1) or (2) of subsection (b) shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

"(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

"(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assess-

ment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

"(e) For purposes of this section, the term 'employer' does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

"(f) If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or any of its political subdivisions has failed to comply with paragraph (1) or (2) of subsection (b), the Secretary shall terminate payments to such State under sections 317, 318, and 1002 and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply."

SEC. 8. RESTRICTIVE STATE LAWS.

Section 1311(a)(1) (42 U.S.C. 300e–10(a)(1)) is amended by striking out "or" at the end of subparagraph (C), by striking out ", and" at the end of subparagraph (D) and inserting in lieu thereof ", or", and by adding at the end the following:

"(E) imposes requirements which would prohibit the entity from complying with the requirements of this title, and".

SEC. 9. PROHIBITION ON CERTAIN POLICY CHANGES.

With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policy statements, interpretations, or practices in effect on the date of the enactment of this Act.

And the Senate agree to the same.

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,
NORMAN F. LENT,
ED MADIGAN,
Managers on the Part of the House.

EDWARD M. KENNEDY,
PAUL SIMON,
BROCK ADAMS,
SPARK MATSUNAGA,
ORRIN G. HATCH,
DAN QUAYLE,
GORDON HUMPHREY,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3235) to amend the Public Health Service Act to revise the program of assistance for health maintenance organizations, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment which is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

1. ORGANIZATION: FISCAL OPERATION

Present law

Section 1301(c)(1)(A) requires each health maintenance organization (HMO) to "have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary."

House bill.

No provision.

Senate amendment

The amendment clarifies that an HMO can be federally qualified only if it has a fiscally sound operation that is satisfactory to the Secretary. The amendment requires the Secretary to issue regulations stating the circumstances under which the Secretary, in determining fiscal soundness, will consider the resources of an organization which owns or controls an HMO. The amendment also describes the circumstances under which the Secretary, prior to the effective date of the regulations, will consider an application for federal qualification from an HMO that is owned or controlled by such an organization.

Conference agreement

The agreement includes the Senate amendment with minor drafting changes that do not alter the substance of the provision.

2. COMMUNITY RATING

Present law

Section 1302(8) authorizes HMOs to establish their premiums in two ways—community rating and community rating by class.

House bill

The bill modifies the definition of community rating to permit premiums to be fixed for the individuals and families of a group on the basis of an HMO's revenue requirements for providing services to the group. If the group has less than 100 persons, the premiums could not be greater than 120 percent of the premiums that would be fixed for such individuals and families under one of the other two methods of community rating.

Senate amendment

The amendment differs from the House bill in two ways. First, for groups of less than 100, the premiums could not exceed 110 percent. Second, an HMO which uses this new community rating system must, on the request of the entity with which it contracts to provide services to the group, disclose to the entity the method and data used in calculating the premiums for the group.

Conference agreement

The agreement includes the Senate amendments.

The conferees understand that a question has been raised about the description of community rating by class under current law in section 6(b) of the section-by-section analysis of both the House and Senate Committee reports. It appears that the brief description of community rating by class has been misunderstood as possibly allowing discrimination based on sex or age. The reference in both reports to "sex and age" was only in relation to putting employees in classes and does not alter the current statutory requirement in section 1302(8)(C) that premium rates "be equivalent for all individuals in the same group and for all families of similar composition in the same group."

There should be no doubt about Title XIII of the Public Health Service Act or this Conference Report with regard to sex or age discrimination. Nothing in either the statute or this Report authorizes or permits an HMO or an employer to engage in any conduct that constitutes a violation of any federal or state sex or age discrimination law.

3. EMPLOYEES' HEALTH BENEFITS PLANS

Present law

Section 1310 provides the circumstances under which employers are required to offer their employees the option of membership in a federally qualified HMO. Regulations specify how much an employer must contribute toward employee enrollment in HMOs offered by the employer.

House bill

The bill specifies that employer contributions on behalf of employees who enroll in an HMO may not financially discriminate against those employees.

Senate amendment

The amendment differs from the House bill in two ways: First, a provision is included which specifically states that the amendments to section 1310 shall not be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment. Second, a provision is included which would repeal section 1310 on October 1, 1993.

Conference agreement

The agreement includes the Senate amendment on collective bargaining agreements. The agreement also provides for a repeal of the "dual choice" provisions in section 1310 on the date seven years after the date of enactment.

In the seven years prior to the repeal of dual choice, the conference agreement does not alter the current interpretation of the way in which section 1310 applies to employers. Section 1310 applies to those employers which have been mandated by a federally qualified HMO. Therefore, only in the case of a mandated HMO would an employer be required by Title 13 to comply with the new "financial discrimination" language.

Once the repeal of dual choice occurs, this limitation to mandated HMOs is changed. Beginning at that time, employers and state and political subdivisions which voluntarily offer to their employees the option of enrollment in one or more federally qualified HMOs would be required to comply with the new "financial discrimination" language for each such HMO.

4. MEDICALLY NECESSARY PROCEDURES

Present law

HMOs are required to provide medically necessary services.

House bill

No provision.

Senate amendment

The amendment prohibits the Secretary from changing regulations, policy statements, interpretations and practices regarding the performance of medically necessary procedures that are in effect on the date of enactment.

Conference agreement

The agreement includes a prohibition only with respect to abortion services. Under the agreement, the Secretary would be prohibited from changing regulations, policy statements, interpretations

and practices with respect to abortion services in effect on the date of enactment.

JOHN D. DINGELL,
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